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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re MICHAEL D., a Person Coming  
Under the Juvenile Court Law.

B244621  
(Los Angeles County  
Super. Ct. No. MJ20326)

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL D.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Akemi Arakaki, Judge. Affirmed.

Tonja R. Torres, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant, Michael D., admitted having committed “vandalism [with] over \$400 [in] damage-graffiti,” a felony. (Pen. Code, § 594, subd. (a).) The juvenile court declared Michael D. a ward of the court (Welf. & Inst. Code, § 602), but did not sustain the petition filed against him. Instead, the court deferred entry of judgment (Welf. & Inst. Code, § 790) and placed Michael D. at home on probation for between 12 and 36 months. As a condition of probation, Michael D. was to pay \$2,904.96 in restitution and a restitution fine in the amount of \$110. At proceedings held on August 29, 2012, Michael D. made a motion requesting the juvenile court to find that he was unable to pay the restitution and the restitution fine (see Welf. & Inst. Code, § 742.16) and to dismiss the matter pending against him (Welf. & Inst. Code, § 790). The juvenile court denied Michael D.’s motions and determined that the order of deferred entry of judgment was to remain in full force and effect. Michael D. appealed. We affirm the juvenile court’s orders.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

##### *1. Facts.*<sup>1</sup>

On October 13, 2010, John Munoz worked as a maintenance person for the Meadow View Apartments in Palmdale. As he was driving his truck north on Fifth Street East, which runs in front of the apartments, Munoz noticed a “group of kids sitting on the wall [which] separates the ‘Meadow View Apartments’ from the ‘Shadow Spring Apartments.’ ” One young man, who was later identified as 17-year-old Michael D., was standing on the sidewalk.

As Munoz passed the group, he looked into his rear view mirror and saw Michael D. bend down and write something on the sidewalk. Munoz stopped, got out of his truck and approached Michael D. As Munoz did so, one of the juveniles who had been sitting on the wall, Michael D.’s friend, Ramond S., jumped down from the wall,

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<sup>1</sup> The facts have been taken from the probation report.

ran toward Michael D. and tapped him on the shoulder. The two young men then ran into the apartment complex and out of Munoz's sight.

Munoz contacted the Los Angeles County Sheriff's Department and reported the vandalism. Deputy Hilzendeger was one of the deputies who responded to the call. When he reached the apartment building, he contacted Munoz, who told the deputy what he had seen. Other deputies arrived and searched the area for the two young men. At the rear of the apartment complex, Deputy Jason Trevillyan was able to detain Michael D. and Ramond S. Both youths had black ink on their hands.

Deputy Hilzendeger transported Munoz to the area where Michael D. and Ramond S. were being held. After being advised of field show-up procedures, Munoz viewed the two young men. He positively identified Michael D. as the person he had seen write on the sidewalk and he identified Ramond S. as the youth "who he believed was acting as a lookout and [had] fled with [Michael D.]"

Hilzendeger "*Mirandized*"<sup>2</sup> Michael D., who indicated he understood his rights and was willing to waive them and speak to the deputy without the presence of an attorney. When Hilzendeger then asked Michael D. what had happened in front of the apartment complex, Michael D. indicated he had been walking down the sidewalk and stopped to tie his shoe. As he bent down, Michael D. heard Munoz yell at him and he ran away. Michael D. denied writing on the sidewalk.

Deputy Leo Lane advised Ramond S. of his rights pursuant to *Miranda* and the young man agreed to speak with the deputy without the benefit of the assistance of counsel. Ramond S. told the deputy he was "just hanging out sitting on the wall" when he saw Munoz stop and get out of his truck. When Munoz yelled at him, Ramond S. got down from the wall and ran. Ramond S. denied seeing Michael D. write anything on the sidewalk.

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<sup>2</sup> *Miranda v. Arizona* (1966) 384 U.S. 436.

When Deputy Hilzendeger checked for graffiti, he saw the letters “ ‘SDK’ ” written in four separate areas. In addition, the light post in front of the apartment complex had “ ‘187 FDKINGS’ ” written up the side. The brick wall which separates the Meadow View Apartments from the Shadow Springs Apartments had “multiple areas [covered] with graffiti.” On the west end of the wall, the deputy observed the letters “ ‘FDK’ ” written with both a green and purple substance. On the east end of the wall, the deputy saw a “No Parking” sign with “ ‘FDK ORFIN’ ” written on it with a black marker. At the rear of the Shadow Springs Apartments, the deputy observed the words “ ‘FDK = ORFIN SPADE’ ” sprayed on the wall with black paint. On the window north of the door to the front entrance to the Shadow Springs apartment building, the deputy saw the letters “ ‘FDK’ ” written with a pink substance.

Hilzendeger went to the apartment where Michael D. lived and contacted his mother. There, the deputy advised Michael D.’s mother that deputies had detained Michael D. with regard to an investigation involving vandalism and asked her if he could search Michael D.’s room. Michael D.’s mother allowed the deputy to search Michael D.’s room for “graffiti tools and paraphernalia.” During the search, the deputy recovered from the top of a desk a piece of paper which had the letters “ ‘FDK’ ” written on it in black ink. Hilzendeger then contacted Ramond S.’s mother at the apartment where they lived. After advising her that her son was being detained with regard to a vandalism investigation, the deputy asked Ramond S.’s mother if he could search Ramond S.’s room. His mother replied, “ ‘Yes[,] of course. He’s already on probation.’ ” During the search, the deputy found four pieces of paper with the words “ ‘FDK’ ” and “ ‘ORFIN’ ” written on them.

Both Michael D. and Ramond S. were transported to the Palmdale Sheriff’s Station where they were booked into custody on charges of vandalism. At the station, a deputy asked Michael D. and Ramond S. “if they had anything to do with the graffiti at the apartment complex.” Michael D. admitted having written “ ‘FDK SPADE’ ” on the sidewalk with a green crayon. He, however, denied responsibility for any of the other

graffiti in the area. When the deputy asked Michael D. if he used “ ‘Spade’ ” as his moniker, the youth replied, “ ‘I just looked at the spade on my shirt and thought it sounded cool.’ ” When questioned, Ramond S. admitted having written “ ‘FDK’ ” on the wall and sidewalk. He denied painting or drawing any of the graffiti at the apartment complex and stated that he did not use “ ‘Orfin’ ” as a moniker.

In his report, Deputy Hilzendeger concluded that, based upon Michael D.’s and Ramond S.’s statements, the evidence recovered from their bedrooms and the similarity of the writing of the graffiti at the apartment complexes, the two young men were responsible for all of the indicated graffiti. In addition, the deputy believed that Michael D. goes by the moniker of “ ‘Spade’ ” and Ramond S. goes by the moniker of “ ‘Orfin.’ ” The deputy booked into evidence the papers recovered from Michael D.’s and Ramond S.’s bedrooms, then photographed the damage at the apartment buildings “and downloaded the image[s] to [the] Palmdale Station shared files.” Deputy Treyvillyan also downloaded photographs of the damage and of Michael D.’s and Ramond S.’s hands.<sup>3</sup>

Both Michael D. and Ramond S. were “cited” for violating Penal Code section 594, subdivision (b)(1),<sup>4</sup> then released to their respective mothers.

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<sup>3</sup> Deputy Hilzendeger also contacted Community Service Deputy Gutierrez, who advised him that she had taken “a vandalism report at the Shadow Springs Apartment [complex]. [¶] The victim [had] reported [that] persons unknown [had written] ‘FDK’ on the front passenger side fender of her Volkswagen Beetle.” When asked, both Michael D. and Ramond S. denied having written on any vehicles.

<sup>4</sup> Section 594, subdivision (b)(1) provides: “If the amount of defacement, damage, or destruction is four hundred dollars (\$400) or more, vandalism is punishable by imprisonment pursuant to subdivision (h) of Section 1170 or in a county jail not exceeding one year, or by a fine of not more than ten thousand dollars (\$10,000), or if the amount of defacement, damage, or destruction is ten thousand dollars (\$10,000) or more, by a fine of not more than fifty thousand dollars (\$50,000), or by both that fine and imprisonment.”

## *2. Procedural history.*

In a petition filed pursuant to Welfare and Institutions Code section 602 on January 14, 2011, Michael D. was charged with three counts of “vandalism over \$400 damage-graffiti, in violation of Penal Code [section] 594[, subdivision (a)], a Felony.” In count 1 it was alleged Michael D. had “unlawfully and maliciously deface[d] with graffiti and other inscribed material real and personal property, to wit, sidewalks, [a] block wall and light pole not his/her own, belonging to [the] City of Palmdale, the amount of said damage being over \$400.00.” In counts 2 and 3, it was alleged Michael D. had “unlawfully and maliciously deface[d] with graffiti and other inscribed material real and personal property, to wit, [a] wall not his/her own, belonging to [the] City of Palmdale, the amount of said damage being over \$400.00.” Also on January 14, 2011, a notice of financial responsibility pursuant to California Rules of Court, Juvenile, rule 1309, was issued. The notice indicated that a number of sections of the Welfare and Institutions Code provide that the “father, mother, spouse, or other person liable for the support of a minor, the estates of such persons, or the estate of such minor shall be liable for the costs to the county for certain services” including the “costs of payment of [a] fine.” The notice further states that “[p]arties as described above may be liable for payment of any fine levied for the violation of vandalism or graffiti if the minor is unable to pay the fine.”

At proceedings held on May 10, 2011, Michael D., after having been advised of and waiving his constitutional rights, admitted the charge he committed “vandalism [with] over \$400 [in] damage-graffiti, in violation of Penal Code [section] 594[, subdivision (a)], a Felony” as alleged in count 1 of the petition. The juvenile court found that Michael D. “freely and voluntarily” admitted the offense and that there was a factual basis for the admission. After then dismissing counts 2 and 3 pursuant to a settlement agreement, the juvenile court declared Michael D. a ward of the court (Welf. & Inst. Code, § 602) and found the allegations as to count 1 to be true, but did not sustain the petition. Instead, the juvenile court deferred entry of judgment (see Welf. & Inst. Code, § 790) and placed Michael D. at home on probation for a period of 12 to 36

months. Michael D.'s counsel joined in the admission pursuant to *People v. West* (1970) 3 Cal.3d 595 and both parties stipulated that Michael D. was to pay restitution in the amount of \$2,848. In addition, Michael D. was to “[m]ake restitution to the Restitution Fund in the amount of \$100.00.”

On June 27, 2012, counsel for Michael D. gave notice that Michel D. was going to make a motion pursuant to Welfare and Institutions Code section 742.16 regarding his ability to pay the restitution ordered.<sup>5</sup> A hearing was held on the matter on August 29, 2012. At those proceedings, Michael D., who was 19 years old at that time, asserted that although he had applied for numerous jobs, he had been unable to obtain employment. With regard to Michael D.'s parents, Michael D.'s counsel indicated that his father works at a company which puts up fencing, but that “work [had] been really slim lately.” As to Michael D.'s mother, she “only occasionally gets babysitting employment[] [s]o her ability to pay is also impaired.” Under these circumstances, Michael D. had been unable to pay the \$2,904.96 in restitution and the \$110 restitution fine. Counsel for Michael D. requested that the juvenile court dismiss the matter pursuant to Welfare and Institutions Code section 790 and the requirement that he pay restitution “be eliminated as allowed by statute based on his and his parents’ inability to pay.”

After hearing argument by the prosecutor who, among other assertions, indicated that Michael D. was young and appeared to be “of sound mind and body” and would, under those circumstances, eventually find employment, the juvenile court denied Michael D.'s motions. The juvenile court indicated that it had jurisdiction over Michael D. for two more years, until he was 21 years old, and that his situation could change from “day to day.” The court stated: “The court is going to deny the motion. The court is not going to make a finding that Michael [D.] is unable to make the restitution payment in the amount of time that the court has jurisdiction over the matter. He is on deferred entry of judgment. He has only been on deferred entry of judgment for

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<sup>5</sup> In the probation officer's report dated August 8, 2012, it is indicated that Michael D. owes \$2,904.96 in restitution and a restitution fine in the amount of \$110.

about sixteen months. [¶] . . . [T]he court does have up to three years that the court can keep him on deferred entry of judgment. [It is] not going to make a finding that he isn't capable of making those payments in that the court in its discretion can take into consideration his future prospects [with regard to] his ability to pay." The juvenile court continued, "So, therefore, the court is going to deny the motion and the request at this time. [It is] going to again follow the request of [the] Probation [Department] which is that the matter be left on calendar [and that Michael D. go back to court] in a few months." The court decided to keep "the deferred entry of judgment in full force and effect" for another three months, until November 20, 2012. The juvenile court indicated that, at that time, depending upon Michael D.'s circumstances, the court might reconsider Michael D.'s request and motion. However, at this point, the juvenile court was going to deny them.

On October 15, 2012, Michael D. filed a timely notice of appeal from the juvenile court's August 29, 2012 orders. As grounds for appeal, Michael D.'s counsel indicated that the juvenile court had "[i]nadequate[ly] [considered] Michael [D.'s] lack of ability to pay [the restitution and restitution fine ordered] pursuant to Welfare and Institutions Code section 742.16."

### **CONTENTIONS**

After examination of the record, appointed appellate counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record. By notice filed February 28, 2013, the clerk of this court advised Michael D. to submit within 30 days any contentions, grounds of appeal or arguments he wished this court to consider. No response has been received to date.

### **REVIEW ON APPEAL**

We have examined the entire record and are satisfied counsel has complied fully with counsel's responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

**DISPOSITION**

The juvenile court's orders are affirmed.

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KITCHING, J.

We concur:

CROSKEY, Acting P. J.

ALDRICH, J.